IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

CLAUDE BYRON JOHNSON and BILLIE LOUISE JOHNSON,	)	Bankruptcy Case No. 93-30826
Debtors.	)	
STEPHEN R. CLARK, Trustee,	)	
Plaintiff,	)	
vs.	)	Adversary Case No. 95-3161
B. ELWOOD LATTA,	)	
Defendant.	)	

OPINION

This matter having come before the Court for trial on a Complaint filed by the Trustee, Stephen R. Clark; the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The Trustee's Complaint, as originally filed on July 19, 1995, consisted of four counts. Count I sought an injunction against Defendants, B. Elwood Latta and Natalina Latta, from using, moving, selling, or otherwise operating machinery belonging to a partnership known as J & L Farms as of December 1987. Count II is an action seeking an accounting and turnover to Debtors' bankruptcy estate of Debtors' distributive share of J & L Farms, together with interest and earnings from the dates these amounts were allegedly converted by the Defendants to present. Count III was an action for an accounting and turnover for a partnership known as J & L Building. Count IV was a preference action against the Defendants seeking return of property which they allegedly transferred to themselves in violation of 11 U.S.C. § 547 within one year prior to the bankruptcy proceedings herein.

Counts III and IV were voluntarily dismissed by the Plaintiff in an Order entered on September 26, 1996. Prior to the commencement of trial on October 7. 1996. the Plaintiff voluntarily dismissed Count I of the Complaint and also voluntarily dismissed Natalina Latta as a Defendant in the action. The trial proceeded on Count II only, wherein the Trustee alleged that Defendant, B. Elwood Latta (Elwood Latta), as a managing partner in the partnership known as J & L Farms, be required to account for and turn over any earnings or distributive shares due to the Debtor, Claude Byron Johnson (Byron Johnson), as the other partner in J & L Farms.

At the outset, the Court must note that the credibility of the testimony and documentary evidence submitted by the parties was of significant importance in this matter, a fact which Plaintiffs attorney recognized and stressed in his arguments. In this regard, the Court found that the testimony and documentary evidence submitted by the Defendant, Elwood Latta, was credible. Based upon the Defendant's demeanor and appearance, the manner in which he answered questions, and how his answers related to other evidence in the case, the Court found the Defendant to be believable and consistent. The Court also found that the witnesses offered on behalf of the Plaintiff, namely Debtor Claude Byron Johnson and Billie Louise Johnson, were also credible witnesses.

In order to understand the Court's ruling in this matter, it is necessary to set out a historical outline of the business relationship between the Defendant and Debtor, Byron Johnson, which dates back to the early 1960s when these two men began working in farming and business ventures together. Sometime in 1975, the Defendant and Byron Johnson created a farming partnership known as J & L Farms for the purpose of purchasing and fanning upon certain real estate. A written partnership agreement was signed on or about May 5, 1981, by the parties; however, neither Natalina Latta nor Billie Louise Johnson signed this agreement, nor were they ever partners in J & L Farms. The initial capital contribution of each partner was $50,000, for a total initial capitalization of the partnership in the amount of $100,000. Byron Johnson never made any additional capital contributions to J & L Farms other than his initial contribution of $50,000. Neither Byron Johnson nor his wife ever loaned any money or contributed any other property to J & L Farms other than their initial $50,000 capital contribution.

The farming operation of J & L Farms proceeded apparently without a hitch until April or May 1987, when Byron Johnson informed the Defendant that he would no longer go to the fields to assist in the farming operation. The record is void of any explanation why Byron Johnson decided to cease his involvement in the farming operation of the partnership. Although there was a hint that it may have been as a result of some dissatisfaction with the Defendant, the Plaintiff presented no evidence to show that there had been some disagreement between the parties which caused Byron Johnson's refusal to assist in the farming operation in 1987. The Defendant continued to farm the partnership ground using partnership equipment and providing Byron Johnson with copies of the partnership's schedule K-1 tax form for each year that J & L Farms filed a partnership return during the years of 1978 through 1993. The record indicates that, following the Spring of 1987, Byron Johnson had little, if anything, to do with the partnership except for providing some labor, operating a combine during harvest in the years 1988 and 1989, for which he received money from the Defendant in the total sum of $1,100.

Debtor, Claude Byron Johnson, testified that, until sometime in 1986, he completely trusted the Defendant to keep the books and records of J & L Farms. This trust was apparently eroded when Byron Johnson first saw detailed information about the liabilities of J & L Farms in 1986 when he obtained copies of bank and financial records of J & L Farms from The First National Bank of Sparta in relation to a receivership action which the Bank had commenced against Mr. and Mrs. Johnson sometime in 1986. Apparently, The First National Bank of Sparta subpoenaed J & L Farms' partnership, bank, and financial records from the Defendant in connection with the receivership proceeding. It was as a result of this subpoena that Byron Johnson came into possession of the records of J & L Farms. As part of his testimony, Byron Johnson testified that he requested, but was denied access to the J & L Farms' bank and financial records prior to 1986. Byron Johnson testified that he had made numerous requests of the Defendant to allow him to examine the records, but said requests were always ignored. The Court finds it curious that, even though he was apparently denied access to the records of the partnership for some period of time, Byron Johnson undertook no legal action to require the Defendant to turn over those records, nor was there any evidence that any of his requests for access to those records were ever made in writing. The evidence further shows that, from the period of 1987 through August 1993, when the Debtors filed for bankruptcy, no action was taken to compel a turnover of the partnership records or to seek an accounting of the financial affairs of the partnership known as J & L Farms. In fact, no action was taken until the filing of this adversary proceeding in July 1995.

Throughout the period 1975 through 1987, the partnership assets of J & L Farms consisted of machinery, equipment, farm land, crops, and working capital. During this period of time, most, if not all, of the machinery and equipment owned by J & L Farms was housed at a storage facility within 300 feet of the home of the Debtors herein. Most of the land owned by J & L Farms was located in very close proximity to the home of the Debtors, such that the Debtors could review the farming operation which was being conducted by the Defendant at any time. In fact, testimony indicated that the Debtor, Byron Johnson, had personally observed the farming operation of the Defendant on an occasional basis from 1988 through 1994.

At the time Byron Johnson ceased his involvement in J & L Farms in 1987, the partnership owned various farm equipment, having an approximate value at that time of $128,000. During the period from 1987 through 1995, the Defendant farmed the real estate owned by the partnership using the machinery and equipment that had originally been purchased by the partnership. In 1988, the Defendant transferred the ownership of the machinery and equipment of the partnership to himself by applying a portion of the outstanding indebtedness owed by the partnership to the Defendant and his wife toward the acquisition price of the equipment, which would have been one-half of the approximate $128.000 value. The Plaintiff complains that this transaction was not conducted in a proper manner and that, in fact, the transfer of the equipment into the name of the Defendant was done in a fraudulent way. The facts of this matter do not bear out this argument in that it is clear that, during the entire life of the partnership, the Defendant and his wife, and other related companies owned by the Defendant, infused substantial amounts of capital into the partnership to keep it going. As such, it was clear to the Court that there was substantial indebtedness in favor of the Defendant which he could use to offset his purchase of the machinery and equipment of the partnership.

In 1987, at the time Byron Johnson informed the Defendant that he would no longer work in the fields with him, the partnership farmed approximately 400 acres of land, including approximately 62 acres of land that was owned by Natalina Latta. The evidence shows that, during the period of 1988 through 1995, the partnership actually sustained a net loss, and that, during this period, any net proceeds from grain sales of the partnership were applied by the Defendant to pay the debts of the partnership that had accrued prior to 1987. In fact, the record shows that, during this period of time, the Defendant was successful in paying off all of the partnership debts as they existed at the time Byron Johnson ceased his involvement in the partnership. In 1988, 371/2 acres of the partnerships ground was sold for the net sum of $74,357.37, the entire sum of which was paid to Agribank FSB, formerly known as The Federal Land Bank and also known as Farm Credit Services, a creditor of the partnership, as partial payment on the partnership's debt that had accrued prior to 1987. In late 1995, the remaining land owned by the partnership was sold at an auction conducted by The First National Bank of Sparta. The gross proceeds of sale totaled $271,797.18. The net sale proceeds totaled $266,554.66. From this 1995 sale, the Defendant received the sum of $133,277.33. The First National Bank of Sparta received the balance, in the amount of $133,277.33, which it credited to its judgment lien against the partnership interest of Byron Johnson under its 1986 Judgment.

During the time period of 1975 through 1980, the evidence indicated that Byron Johnson and Elwood Latta, as the partners of J & L Farms, jointly executed a series of promissory notes in favor of Natalina and/or Elwood Latta to evidence funds that they had loaned to J & L Farms. These promissory notes evidence some, but not all, of the obligations owed by the partnership to the Defendant and his wife. The Defendant also introduced into evidence canceled checks, check registers, and other documentary evidence indicating that, during the period of 1975 through 1987, the Defendant and his wife injected substantial amounts of money into the partnership for operating expenses and payment of partnership debt. The sum of money loaned to the partnership by the Defendant and his wife was in excess of $440,000. Based upon this evidence, the Court has no difficulty in finding that the partnership was not a profitable venture almost from its inception.

During the period 1975 through 1987, the evidence indicates that the partnership made cash payment to the Defendant and/or his wife in the sum of $135,238.29. Although the Plaintiff complains about these transactions and seeks to have the Court believe that these transactions were done in secret and made with the intention of deceiving Byron Johnson, the Court finds that the evidence simply does not support the Plaintiffs proposition. The evidence is clear that the Defendant and/or his wife had loaned substantial monies to the partnership, and, although the manner in which they were repaid was not technically perfect, there is nothing in the evidence to indicate any fraudulent intent on the part of the Defendant. The evidence further indicates that, on or about December 16, 1987, Byron Johnson received payment of his original $50,000 capital contribution to the partnership as a result of a sale of an option to purchase real estate to Peabody Coal Company. Evidence indicates that Byron Johnson used his $50,000 capital distribution to repay a personal obligation owing to The First National Bank of Sparta, while the Defendant used his $50,000 capital distribution from the real estate transaction as a reinvestment back into the partnership immediately thereafter. As of the date of trial in this matter, the Court finds that the partnership still owed in excess of $365,000 to the Defendant and his wife by virtue of the various loans and capital infusions made by the Defendant and his wife beginning in 1975.

Conclusions of Law

There is no dispute between the parties that the law of the State of Illinois governs this action and that the Uniform Partnership Act, found at 805 ILCS 205/1, *et seq.*, controls this action for accounting and turn over filed by the Plaintiff.

While it is disputed at exactly what moment in time dissolution of this partnership occurred, the Court finds that dissolution had, in fact, occurred prior to the filing of the Complaint in this matter such that Byron Johnson was entitled to an action for an accounting of the partnership's assets, liabilities, and income pursuant to 805 ILCS 205/43. It is equally clear that Elwood Latta, as managing partner of the subject partnership, had a fiduciary duty to act in good faith and honesty in all dealings and transactions with the partnership. See: Couri v. Couri, 447 N.E.2d 334, at 337 (S.Ct. Ill. 1993). At the crux of this matter is the belief of Byron Johnson that the Defendant somehow acted improperly in his management of the partnership following Mr. Johnson's refusal to go to the fields in the Spring of 1987. Having reviewed all of the evidence in this matter, the Court finds that the Defendant has provided an accounting which sufficiently indicates that there were no improprieties on behalf of the Defendant and that all partnership income and assets were used either to pay legal debts of the partnership or to reimburse the partners for their individual capital investments.

As the Court noted in its Findings of Fact, the credibility of the witnesses in this matter was a key factor which the Court considered in making its decision. As noted above, the Court found that Byron Johnson and his wife were both credible witnesses; however, in reviewing the testimony which they provided, the Court must note that it found nothing startling or overwhelmingly disfavorable to the Defendant. The Court recognizes that there were some discrepancies in the records provided by the Defendant; however, the Court finds that those discrepancies were minor and certainly did not indicate any fraudulent activity on the part of the Defendant. While it may be true that the Defendant did not necessarily follow proper rules and procedures in winding up the affairs of the partnership as enumerated in the statutes at 805 ILCS 205/1, *et seq.*, in the end, the Court can conclude that the Defendant met his obligations as the managing partner of J & L Farms. The evidence shows that the Defendant completely discharged all liabilities of the partnership except those owed to him and/or his wife through his wind-up and liquidation of the partnership property. This is borne out by the fact that no partnership creditors filed any claims against the Johnson's bankruptcy estate. Byron Johnson and/or his bankruptcy estate are entitled only to any profits remaining after (a) payment of any liabilities owing to the partnership creditors, (b) payment to Elwood Latta or Natalina Latta for money loaned to the partnership, and (c) return of Elwood Latta's capital contributions. <u>See</u>: 805 ILCS 205/40. In light of this, the Court can easily conclude that there are no monies available for payment to Mr. Johnson or his bankruptcy estate, leading the Court to find that Count II of the Plaintiff's Complaint should be dismissed with the parties bearing their own costs.

ENTERED: <u>November 12, 1996</u>

/s/ GERALD D. FINES
United States Bankruptcy Judge